

REMARKS/ARGUMENTS

In view of the foregoing amendments and following remarks, favorable reconsideration of the pending claims is respectfully requested.

Status of the Claims

Claims 1, 2, 4 – 23, and 26-29 are currently pending. Claims 3 and 24 – 25 have been cancelled. By way of this amendment, Claim 30 has been cancelled.

Claim 29 has been amended to recite that the cellular material infiltrates and fills the voids defined by each individual honeycomb. Support for this amendment can be found, for example, in paragraph [0032].

Prior Art Rejections

Claims 1, 2, 4 – 9, 14 – 23, and 26 – 30 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2004/0161989 to Dennis in combination with Steeghs. Claims 10 – 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of Dennis, Steeghs, and Brink. Applicants respectfully traverse these rejections.

Dennis is directed to an anti-projectile barrier fabric having a pair of internal foam layers that are sandwiched between, and bonded to, two outer cloth-like fabric layers. The Office Action asserts that the foam layers would partially infiltrate the fabric layers. However, there is absolutely no support for such an assertion, and the Examiner has provided none except for her own opinion. In fact, Dennis does not have any teachings with respect to the foam layers infiltrating the fabric layers, and as such this element is missing. To make up for this shortcoming, the Examiner alleges that in her opinion the foam would infiltrate the fabric layers at least partially to a degree. In other words, it is the Examiner's opinion that the cellular material of Dennis *inherently* infiltrates the fabric layers.

To establish inherency, the missing element must necessarily be present. Inherency cannot be established by probabilities or possibilities. Further, according to MPEP 2112 IV, the Examiner must provide rationale or evidence tending to show inherency. Further, "the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of the result or characteristic." See MPEP 2112. In the present case, the Examiner has provided neither rationale, nor evidence in support to the present claim rejections. Rather,

the presence of the missing element (i.e., infiltration of the cellular material at least partially into the fabric layers) is provided solely based on the Examiner's opinion. This is contrary to the standard set forth in the MPEP. Rather, this rejection is based on possibilities and speculation; it is not based on what Dennis actually teaches. As such, the rejection based on Dennis should be withdrawn.

If the Examiner intends to maintain this rejection, it is respectfully requested that the Examiner provide a signed declaration for the record setting forth a basis and rationale for why the foam layer of Dennis would infiltrate the fabric layers. If the Examiner is unwilling or unable to make such a showing, it is respectfully requested that the rejections based on Dennis be withdrawn.

In fact, contrary to the Examiner's assertions, one would expect the opposite. That is, that the cellular material of Dennis does not infiltrate the fabric layers. As pointed out in Applicants' last response, Dennis describes that the fabric layers 14, 15 are preferably joined to the foam layers 16, 17 with a heat-settable adhesive that is disposed between the fabric and foam layers. Dennis provides no teachings of how the fabric layers would be joined to the foam layer absent the adhesive layer. From the discussion at paragraph 0015 of Dennis, it is evident that an adhesive layer is disposed between the foam layers and the outer fabric layers. The adhesive layers provide separation between each respective foam and fabric layer and would prevent the foam layers from infiltrating the fabric layers. Additionally, the use of an adhesive to bond the fabric layers to the foam layers necessarily implies that the fabric layers are applied to previously formed foam layers, and as such, the foam layers do not partially infiltrate the fabric layers. Neither Steeghs nor Brink even include a cellular core and therefore do not provide this element.

Further, the assertion that the foam layers would partially infiltrate the fabric layers is not supported by the teachings of Dennis and is based on pure speculation at best. In fact, the assertion is contrary to the specific teachings of Dennis because of the presence of the adhesive layers between the foam and fabric layers. The Office has failed to provide any factual basis that supports the assertion that the foam layers partially infiltrate the fabric layers. In order to establish a *prima facie* case of obviousness, the combination of references must disclose or suggest each and every element. In the present case, the Office has failed to establish that the combination of references disclose or suggest an insulation having a cellular core that at least

partially infiltrates the fabric layers. Accordingly, independent Claims 1, 16, and 23 and any claims dependent thereon are patentable over the cited references, whether considered individually or in combination, because the references fail to disclose or suggest an insulation having a cellular core that at least partially infiltrates the fabric layers.

The Office asserts that the adhesive layer is not present because it is not shown in the Figures 2 and 3. This assertion is without merit because none of the figures show the adhesive layer, although the specification in discussing Figures 2 and 3 specifically states that the fabric layers 14, 15 are preferably joined to the foam layers 16, 17 with a heat-settable adhesive that is disposed between the fabric and foam layers. Thus, Dennis teaches the presence of the adhesive layer although it is not shown in the figures. A reading of the specification shows that the structure described in Figures 2 and 3 includes adhesive layers joining fabric layers and the foam layers together. Accordingly, the Examiner's arguments are not supported by the explicit teachings of Dennis.

With respect to Claim 29, the cited references fail to disclose or suggest a structure in which cellular material infiltrates the voids of the individual honeycomb cross section. In fact, the Examiner has failed to provide any rationale or basis for how the foam material of Dennis could possibly infiltrate and fill the voids defined by the honeycomb cross section of the fabric. As such, the combination of the cited references fails to disclose or suggest each and every element recited in independent Claim 29. Accordingly, Claim 29 is patentable over the combination of references.

Thus, the combination of Dennis, Steeghs and Brink fails to disclose or suggest the claimed invention.

In view of the foregoing amendment and remarks, it is respectfully submitted that the rejections under 35 U.S.C. § 103(a) have been overcome, and that the pending claims are in condition for immediate allowance.

Conclusion

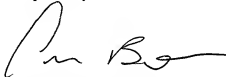
In view of the amendments and remarks made above, Applicant submits that the pending claims are now in condition for allowance. Applicant respectfully requests that the claims be

Appl. No.: 10/669,980
Amdt. dated 08/28/2008
Reply to Office Action of 05/30/2008

allowed to issue. If the Examiner wishes to discuss the application or the comments herein, the Examiner is urged to contact the undersigned by telephone.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tim Balts', with a stylized flourish at the end.

Timothy J. Balts
Registration No. 51,429

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111
LEGAL01/13085155v1

ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES PATENT & TRADEMARK OFFICE ON August 28,2008.